

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI, Respondent,)	No. ED91163
)	
)	Appeal from the Circuit Court of
vs.)	the City of St. Louis
)	
)	Honorable Michael Stelzer
ROBERT B. MABRY, Appellant.)	
)	Filed: May 12, 2009

OPINION SUMMARY

Robert Mabry (“Defendant”) appeals from the judgment of the Circuit Court of the City of St. Louis convicting him of two counts of violating an order of protection and one count of stalking.

REVERSED IN PART and AFFIRMED IN PART.

Division One Holds: The trial court did not abuse its discretion by: (1) allowing the State to admit evidence of Defendant’s uncharged misconduct because the evidence was relevant to show Defendant’s intent and absence of mistake or accident; and (2) denying Defendant’s motion for a continuance for the State’s failure to produce discovery information as ordered by the trial court because Defendant failed to show that the State possessed or could have reasonably acquired the requested information or that the trial court’s failure to grant the continuance resulted in “fundamental unfairness.” The trial court erred in overruling Defendant’s motion for acquittal and sentencing him for stalking because the evidence was insufficient to support the jury’s finding that Defendant “repeatedly and purposefully harassed [the victim] by yelling at her,” as required by the jury instructions. Thus, the judgment with respect to Defendant’s stalking conviction is reversed and we need not reach Defendant’s remaining two points on appeal which exclusively challenge his stalking conviction.

Opinion by: Patricia L. Cohen, J. Kurt S. Odenwald, P.J. and Glenn A. Norton, J., concur.

Attorney for Appellant: Timothy J. Forneris

Attorney for Respondent: Rachel D. Schwarzlose

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